



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

July 22, 2022

Via Electronic Mail

Honorable Mary Anna Holden, Commissioner
NJ Board of Public Utilities
44 South Clinton Avenue, First Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of the Merger of South Jersey Industries, Inc.
and Boardwalk Merger Sub, Inc.
BPU Docket No. GM22040270**

Dear Commissioner Holden:

Please accept for filing this response on behalf of the Division of Rate Counsel ("Rate Counsel") to the following motions filed in the above-referenced matter: (1) Motion to Intervene dated June 28, 2022 filed on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"); (2) Motion to Participate dated July 7, 2022 filed on behalf of Atlantic City Electric Company ("ACE"); (3) Motion to Participate dated July 8, 2022 filed on behalf of Public Service Electric and Gas Company ("PSE&G"); (4) Motion to Intervene dated July 8, 2022 filed by New Jersey Laborer-Employers Cooperation and Education Trust ("NJLECET"); and (5) Motion to Intervene and Request for Leave dated July 15, 2022 filed by the Environmental Defense Fund ("EDF"). Consistent with the Order Designating Commissioner,

Setting Manner of Service and Bar Date¹ issued by the New Jersey Board of Public Utilities (“Board” or “BPU”) in this matter and the Order in In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254 (March 19, 2020), these comments are only being filed and served electronically. No paper copies will follow.

DISCUSSION

On April 25, 2022, IIF US Holding 2 LP (“IIF US 2”), NJ Boardwalk Holdings, LLC (“Boardwalk”), Boardwalk Merger Sub, Inc. (“Merger Sub”), South Jersey Industries, Inc. (“SJI”), SJI Utilities, Inc. (“SIJU”), Elizabethtown Gas Company (“ETG”), and South Jersey Gas Company (“SJG”) (collectively, “Joint Petitioners”), filed a certified joint petition (“Joint Petition”) seeking the authority from the BPU for approval of an indirect change of control of ETG and SJG by way of a merger of SJI and Merger Sub, a wholly-owned subsidiary of Boardwalk, which is in turn a wholly-owned, indirect subsidiary of IIF US 2 (“Proposed Transaction”). Joint Petition, p. 1.

ETG is a public utility corporation of the State of New Jersey, with its principal office in Union, New Jersey. ETG is engaged in the transmission, distribution, transportation and sale of natural gas within its service territory in the State of New Jersey. ETG’s service territory includes all or portions of Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren counties. Within its service territory, ETG serves approximately 306,000 customers. Id., par. 5. SJG is a public utility corporation of the State of New Jersey, with its principal office in Atlantic City, New Jersey. SJG is engaged in the transmission, distribution, transportation and sale of

¹ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., BPU Docket No. GM22040270 (June 8, 2022) (“June 8 Order”).

natural gas within its service territory in the State of New Jersey. SJG's service territory includes all or portions of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties. Within its service territory, SJG serves approximately 413,000 customers. Id., par. 6. ETG and SJG are wholly-owned subsidiaries of SJIU, which in turn is a wholly-owned subsidiary of SJI. Id., par. 4, 5 and 6.

Following the filing of the Joint Petition, the Board issued the June 8 Order retaining the matter for hearing and designating Your Honor as the presiding commissioner. The June 8 Order further provided that all motions to intervene or participate be filed by July 8, 2022, and any party wishing to file a motion for admission of counsel pro hac vice should do so concurrently with any motion to intervene or participate. June 8 Order at 2. Thereafter, EDF requested a one-week extension to file for intervention by way of correspondence dated July 8, 2022, which was denied by Your Honor on July 15, 2022. In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., BPU Docket No. GM22040270, Order of Comm'r Holden (July 15, 2022) ("July 15 Order"). EDF then filed a Motion to Intervene and Request for Leave ("EDF Motion") to file the motion to intervene one week after the July 8, 2022 deadline concurrently with a Request for Interlocutory Appeal of the July 15 Order. Rate Counsel's responses to the motions are as follows:

NJLEUC Motion to Intervene

NJLEUC's Motion to Intervene ("NJLEUC Motion") states that it is an organization whose members include large volume customers served by ETG and SJG. NJLEUC Motion, p. 1. NJLEUC asserts that as large-scale users on the distribution systems of SJI's subsidiary utilities, its members will be directly and immediately affected by the outcome of this matter, and that their interests are unique from and not adequately represented by any other party. Id., p.

2, par. 2. NJLEUC notes that it was permitted to intervene in ETG's prior merger proceedings involving AGL Resources/NUI Southern Company, as well as prior ETG rate and infrastructure proceedings. Id., p. 2, par. 1. Based on NJLEUC's representation that its members are customers of ETG and SJG with a direct interest in the outcome of this proceeding, it appears that NJLEUC meets the standards for intervention under N.J.A.C. 1:1-16.1. Accordingly, Rate Counsel has no objection to NJLEUC's Motion.

ACE Motion to Participate

ACE's Motion to Participate ("ACE Motion") states that it is a New Jersey electric public utility incorporated in the State of New Jersey and maintains a regional office in Mays Landing, New Jersey. ACE is engaged in the transmission, distribution, and sale of electric energy for residential, commercial, and industrial purposes within New Jersey. The Company's service territory comprises eight counties located in southern New Jersey and includes approximately 560,000 customers. ACE's service territory overlaps with that of SJG, serving customers in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem counties. ACE Motion, par. 4.

ACE asserts that it is entitled to participate as it has a significant interest in this matter because it shares certain services and programs with SJG for customers in South Jersey because ACE's customers are often SJG customers as well. ACE also claims that it has a significant interest in the outcome of this matter because substantive policy and/or procedural requirements established in this proceeding can significantly influence, if not have a precedential effect on, the positions taken by parties in, and the outcome of, proceedings involving ACE. Therefore, according to ACE, it is important that it be granted participant status in this proceeding so that it

may monitor developments and be apprised of potential policy developments, both substantive and procedural, on these important issues in a timely manner. Id., par. 8.

ACE adds that its interests in this proceeding are materially different from the Joint Petitioners, who represent their own interests, and from the other parties (i.e., Board Staff and the Division of Rate Counsel), who represent primarily consumer interests. Based on ACE's representations, it appears that it meets the standards for participation under N.J.A.C. 1:1-16.6 and Rate Counsel has no objection to its Motion to Participate.

PSE&G Motion to Participate

PSE&G's Motion to Participate ("PSE&G Motion") states that it is a wholly owned direct subsidiary of Public Service Enterprise Group Incorporated ("PSEG"), with principal and executive offices in Newark, New Jersey. PSE&G states that PSEG is an exempt public utility holding company engaged through its subsidiaries in businesses including electric generation and the transmission, distribution, and sale of electricity and natural gas. PSE&G Motion, par. 1. PSE&G is an electric and gas public utility subject to the Board's jurisdiction. PSE&G is the State's largest provider of electric and gas services. Id., par. 2.

PSE&G states that, as a gas distribution utility that is part of a holding company structure, it has a significant interest on the outcome of this case, because it raises issues respecting public utility holding company money pools, ring-fencing, tax and other policy matters. PSE&G asserts that the Board's decisions in this matter and related conditions that may be place on the proposed merger could affect the PSEG companies as well as their operations going forward. Id., par. 8. Based on PSE&G's representations, it appears that it meets the standards for participation under N.J.A.C. 1:1-16.6 and Rate Counsel has no objection to its Motion to Participate.

NJLECET Motion to Intervene

NJLECET states in its Motion to Intervene (“NJLECET Motion”) that its membership comprises local unions engaged in the construction and heavy highway construction industry. In addition, NJLECET has a management component of its Board which is comprised of representatives of both labor and the Associated Construction Contractors of New Jersey (“ACCNJ”), which represents some of the largest construction firms that work for SJIU and SJG and other New Jersey utilities. NJLECET Motion, par.1. Specifically, NJLECET represents more than 25,000 construction laborers who are employed and have significant experience in site-preparation and construction work for underground cable replacement, construction of concrete pads for electric vehicle charging stations, and gas system modernization work. Id., par. 7.

NJLECET indicates that its membership has extensive experience with New Jersey large-scale construction, and the surrounding political and regulatory environment, and as such is uniquely positioned to evaluate and comment upon the potential impact of the Proposed Transaction. NJLECET further asserts that it has a unique perspective and insight regarding the costs and feasibility of planned infrastructure projects, construction industry best practices for project continuity, the related economic impact of infrastructure investment and the impact of the current financing environment and amortized costs on long-term construction projects. Id., par. 2. NJLECET argues that its interests are unique to the construction industry and those employed by the same because its membership includes large-scale residential and commercial contractors whose projects and businesses will be directly impacted by enhanced energy infrastructure. Id., par. 10-11.

Rate Counsel opposes intervention by NJLECET. The interest of this organization and its members in participating in construction projects, either undertaken by SJG or ETG or resulting from infrastructure upgrades, are not interests that are legally protected under Title 48. Thus, contrary to the assertions in NJLECET's Motion, this organization, as a representative of employees and management involved in the construction industry—as opposed to employees and management of SJI and its utility subsidiaries—does not have a direct interest that would be substantially and directly affected by the outcome of these proceedings. NJLECET Motion, par.12.

NJLECET cites to several prior proceedings wherein it was granted participant status as opposed to intervention. NJLECET Motion, par. 3. In re the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Docket Nos. EO13020155 and GO13020156, Order of Comm'r Fiordaliso at 7 (Sept. 30, 2013) & Order Approving Settlement at 4 (May 21, 2014); In re the Petition of Public Service Electric and Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism, BPU Docket No. GR15030272, Order of Comm'r Fiordaliso at 8-9 (July 2, 2015) & Decision and Order Approving Stipulation at 2 (Nov. 16, 2015); In re the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Cost Recovery Mechanism ("GSMP II"), BPU Docket No. GR17070776, Order of Comm'r Fiordaliso at 9(Nov. 9, 2017) & Decision and Order Approving Stipulation at 2 (May 22, 2018) . Most recently, NJLECET filed a motion to intervene in Public Service Electric and Gas Company's Infrastructure Advancement Program ("IAP") where it advanced the same arguments as it has in this matter, but was denied intervenor status on the basis that it had failed to meet the standard for intervention set forth in N.J.A.C. 1:1-

16.6(c). In re the Petition of Public Service Electric and Gas Company for Approval of an Infrastructure Advancement Program (“IAP”), BPU Docket Nos. EO21111211 and GO21111212, Order of Comm’r Holden at 9 (Mar. 3, 2022) (finding that the nature of NJLECET’s limited interest did not rise to a level that warranted intervention). ²

NJLECET moves in the alternative for participant status, asserting that its “entry as a...participant” would “measurably and constructively advance this proceeding.” NJECET Motion, par. 13. Rate Counsel does not object to the granting of participant status to NJLECET in this proceeding.

EDF Motion

EDF’s Motion states that it is a non-profit organization “whose mission is to preserve the natural systems on which all life depends.” EDF indicates that it has over 105,000 members in New Jersey, including members in the service territories of SJG and ETG and seeks out “practical and lasting solutions to resolve the most serious environmental problems—including addressing the urgent climate crisis.” EDF Motion, par. 1.

EDF asserts that its members have a direct and substantial interest in the issues raised in this proceeding and will be directly affected by the outcome, which entitles it to be granted intervenor status. Specifically, EDF claims that the management, investments, and operations of ETG and SJG have the potential to contribute to, or detract from, the achievement of New Jersey’s climate objectives. EDF points out that the Joint Petitioners allege that the Proposed Transaction will render SJI—and thus its subsidiaries ETG and SJG—‘well positioned to

² In one of the proceedings cited in NJLECET’s Motion, it does not appear to have been either an intervenor or a participant. See In re the Petition of Public Service Electric and Gas Company for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery and for Changes in the Tariff for Electric Service, BPUNJ No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1, BPU Docket No. EO12080721, Order at 1 (May 31, 2013) (list of appearances).

continue to serve its customers and communities, while executing on its initiatives in support of New Jersey's Energy Master Plan.' Id., par. 12. According to EDF, further exploration of these issues in this matter is necessary for the Board to determine whether the Proposed Transaction is in the public interest, and whether "positive benefits will flow" to customers and the State of New Jersey pursuant to N.J.A.C. 14:1-5.14(c). Ibid. Moreover, EDF indicates that it will contribute its expertise in gas utility decarbonization pathways to this matter that will add measurably and constructively to the scope of the case. Id., par. 13. Based on EDF's representation that its members are customers of ETG and SJG with a direct interest in the outcome of this proceeding, as well as its interest in advancing New Jersey's climate and decarbonization goals, it appears that it meets the standards for intervention under N.J.A.C. 1:1-16.1. Accordingly, since EDF has an interest and it has provided a different and often helpful perspective on environmental issues in other matters, Rate Counsel has no objection to EDF's Motion.


CONCLUSION

For the foregoing reasons, (1) NJLEUC should be allowed to intervene, (2) ACE should be allowed to participate, (3) PSE&G should be allowed to participate, (4) NJLECET should not be allowed to intervene but should be allowed to participate, and (5) EDF should be allowed to intervene.

Respectfully submitted,

Brian O. Lipman

Director, Division of Rate Counsel

By: 

Megan Lupo, Esq.
Assistant Deputy Rate Counsel

c: Service List

Steven S. Goldenberg, Esq.

Cynthia L.M. Holland, Esq.

Katherine Smith, Esq.

Bradley M. Parsons, Esq.

Martin C. Rothfelder, Esq.

In the Matter of the Merger of
South Jersey Industries, Inc. and
Boardwalk Merger Sub, Inc.
BPU Docket No. GM22040270

Carmen D. Diaz, Acting
Board Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Brian O. Lipman, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Maura Caroselli, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Sarah H. Steindel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Kurt S. Lewandowski, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Megan Lupo, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Maria Novas-Ruiz, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Carlena Morrison, Paralegal
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Cindy Bianco
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Robert Brabston
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Kyle Felton
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Julie Ford-Williams
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Jacqueline Galka
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Michael Kammer
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Bart Kilar
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Paul Lupo
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Ryan Moran
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Jackie O'Grady
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Christopher Oprysk
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Stacy Peterson
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Jodie Raines
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Scott Sumliner
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Juan Urena
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Heather Weisband
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Benjamin Witherell
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Daren Eppley, DAG
NJ Dept. of Law & Public Safety
Public Utilities Section
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Terel Klein, DAG
NJ Dept. of Law & Public Safety
Public Utilities Section
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Pamela Owen, ASC, DAG
NJ Dept. of Law & Public Safety
Public Utilities Section
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Cindy Capozzoli
SJI Utilities, Inc.
1 South Jersey Place
Atlantic City, NJ 08401

Carolyn A. Jacobs
SJI Utilities, Inc.
1 South Jersey Place
Atlantic City, NJ 08401

Deborah M. Franco, Esq.
SJI Utilities, Inc.
520 Green Lane
Union, NJ 07083

Sheree Kelly, Esq.
SJI Utilities, Inc.
520 Green Lane
Union, NJ 07083

Melissa Orsen
SJI Utilities, Inc.
1 South Jersey Plaza
Folsom, NJ 08037

Kenneth T. Maloney, Esq.
Cullen and Dykeman
1101 14th Street NW
Suite 750
Washington, D.C. 20005

Terrence Regan
Cullen and Dykeman
44 Wall Street
New York, NY 10005

Collen A. Foley, Esq.
Saul Ewing Arnstein & Lehr LP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102

Courtney L. Schultz, Esq.
Saul Ewing Arnstein & Lehr LLP
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102

Amanda E. Wallace, Esq.
Infrastructure Investments Group
277 Park Avenue, 22nd Floor
New York, NY 10172

Andrew E. Gilbert
Infrastructure Investments Group
277 Park Avenue, 22nd Floor
New York, NY 10172

Ellen Lapson
Lapson Advisory
370 Riverside Drive
New York, NY 10025

Susan M. Baldwin
SM Baldwin Consulting
45 Acorn Path
Groton, MA 01450

Andrea C. Crane
The Columbia Group, Inc.
2805 East Oakland Park Boulevard,
#401
Ft. Lauderdale, FL 33306

Matthew I. Kahal
1108 Pheasant Crossing
Charlottesville, VA 22901

Max Chang
Synapse Energy Economics, Inc.
485 Massachusetts Avenue
Suite 3
Cambridge, MA 02139

John Rosenkranz
Synapse Energy Economics, Inc.
485 Massachusetts Avenue
Suite 3
Cambridge, MA 02139